IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.

A.O. No. 662 of 2001
(Old No. 593/1988)

Dwarika Singh. ..... Appellant.

Versus

Shivkumar Gupta & others. ..... Respondents.

Hon'ble Rajesh Tandon J:

Appeal has been transferred from Allahabad High Court.

None appears on behalf of the appellant.

Sri Prabhat Pandey appears for respondent No.2.

I have perused the record. A perusal of the record shows that claim of Rs.25,000/- has been made towards compensation. it is stated that Gore Singh, a cultivator by profession who was earning Rs.500/- per month was returning from Badrinath in Bus No.HRX 2791 in the morning of 31.7.1986 and the bus slipped in downward khud near Hanuman Ghatti due to the negligence of the driver. Gore Singh alongwith others died at the spot inside the bus. His son Dwarika has claimed a sum of Rs 25000/- as compensation in the year 1997 and this claim is still pending in an appeal. The Tribunal has framed as many as seven issues. The Tribunal has come to the conclusion that due to the negligence of the driver the accident had taken place, as a result of which Gore Singh alongwith others died at the spot. The Tribunal has also recorded a finding that a multiplier of 20, for which he would have worked in the field has been taken into consideration. He has been deprived of his wages to the extent of Rs 2400/-

per month due to the death of his father Gore Singh who was aged 55 years at the time of accident. There is no challenge to this effect. Therefore, claim of Rs 25,000/- has been awarded. The Ex.gratia payment has been deducted from the payment of the claim and the claim of Rs. 12,000/- has been given only.

So far as the Exgratia payment is concerned, any amount paid to the appellant from any resource can not be deducted and the claimant is entitled to the whole of the amount of Rs.25,000/-.

It has been held by the Apex Court in 2002 AIR SCW 2920 United India Insurance Co. Ltd. etc. etc. Vs Partricia Jean Mahajan and others etc.etc. that any amount received from any other resources can not be deducted. The observations are quoted below:

“We are in full agreement with the observations made in the case of Helen Rebello (Supra) that principle of balancing between losses and gains, by reason of death, to arrive at amount of compensation is a general rule, but what is more important is that such receipts by the claimants must have come correlation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accident Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part of this judgment, it is clear that amount on account of social security as many have been received must have nexus or relation with the accidental injury or death, so far to

be deductible from the amount of compensation. There must be come correlation between the amount received and the accidental death or it may be in the same sphere, absence the amount received shall not be deducted from the amount of compensation. Thus, the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance4 amount is accelerated due to premature death of the insured. So far other items in respect of which learned counsel for the insurance company has vehemently urged for example some allowance paid to the children, and Mrs. Patricia Mahajan under the social security system no correlation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which payment on account of social security system is made one of the constituent of fund is tax which is deducted from income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr. Mahajan. If the proposition “receipts from whatever source” is interpreted so widely that it may cover all the receipts, which may come into the hands of the claimants, in view of the more death of the victim, it would only defect the purpose of the Act providing for

just compensation on account of accidental death. Such gains may be on account of savings or other investment etc. made by the deceased would not got to the benefit of wrong doer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns."

The Exgratia amount can not be deducted towards the amount of compensation and any amount made by the State can not be adjusted towards the amount of compensation.

The appeal, therefore, is allowed. The claimant shall be entitled to get whole compensation. No order as to costs.

Dated: August 19, 2004
S.S.Negi.

(Hon'ble Rajesh Tandon J.)